Appellate Proceedings and Related issues

Discussions with Commissioner (Appeals)/ JC (Appeals)

All India Course by NADT-RC Kolkata

06/08/2026

Shramdeep Sinha

IRS 2004

CIT (A)-11, Ahmedabad

Session Brief

There are multiple answers to each question of adjudication- depends upon facts and interpretation of law

1. Powers and duty of FAA and ITAT

- Sec 250 and 251, rws 150 rws 46A rws 119(2)(b)
- Jansampark Advertising
- Utilizing powers under Sec 150 of IT Act
- Judicial Discipline: Thana Electricity Company (Bom HC); Dhanalaxmi bank (Kerala HC); is obiter dicta of SC binding on lower authorities? Sun Engineering works (SC)
- Income Tax Proceedings are not a 'lis'
- Error; retrospective interpretation of statute

2. Admission of case for adjudication

- Condonation petition: Limitation Act Sec 3, Sec 5 and Sec 14; condonation powers of ITAT in cases of MA
- Death of petitioner (before filing appeal/ during pendency of appeal) ; S 170 vs S 178
- Admission of additional claim without filing revised RoI- Goetz India (SC) [Lets read together; also please recall 119(2)(b)]
- Admission of additional grounds before FAA vs ITAT:
  - Mixed question of Law and Facts

Session Brief

3. Jurisdictional Question in Grounds of Appeal

- Non-issue of 143(2); 142(1)/144;
- 124(3)
- *Stare decisis* vs public interest
- Common satisfaction note: [Lets read 153C together] (INC Del HC/Saksham Commodities SC)

- **Adjudicatory questions in grounds of appeal**
  - Dealing with appeals having base order u/s 144 of IT Act: suggestion for adjudication- Ashok C Thakore (SC/Guj HC)
  - Lack of Independent enquiries – onus on AO
  - Non-grant of cross examination
  - Retraction

Powers and Duty of FAA

- Sec 250 and Sec 251
- S 150 directions for re-opening
- S 119(2)(b) – advantage and restriction
- Rule 46A
- **Jansampark Advertising**: Commissioner of Income-tax- II vs. Jansampark Advertising & Marketing (P.) Ltd. [2015] 56 taxmann.com 286 (Delhi)/[2015] 231 Taxman 384 (Delhi)/[2015] 375 ITR 373 (Delhi)[11-03-2015]
- Judicial Discipline: **Thana Electricity Supply** Ltd. [1994] 206 ITR 727 (Bombay)/[1993] 112 CTR 356 (Bombay)[22-04-1993]; **read with- Dhanalaxmi Bank Ltd.** [2023] 155 taxmann.com 613 (Kerala)[04-08-2023] **read with-. Sun Engineering Works (P.) Ltd.** [1992] 64 Taxman 442 (SC)/[1992] 198 ITR 297 (SC)/[1992] 107 CTR 209 (SC)[17-09-1992]

Procedure in appeal.

250. (1) The [66][Joint Commissioner (Appeals) or the] Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal—

(*a*) the appellant, either in person or by an authorised representative;

(*b*) the Assessing Officer, either in person or by a representative.

(3) The [67][Joint Commissioner (Appeals) or the] Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

(4) The [67][Joint Commissioner (Appeals) or the] Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the [67][Joint Commissioner (Appeals) or the] Commissioner (Appeals).

(5) The [67][Joint Commissioner (Appeals) or the] Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the [67][Joint Commissioner (Appeals) or the] Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

S 250 (4) and S 250 (5) and Explanation to Sec 251

Explanation.—In disposing of an appeal, the [72][Joint Commissioner (Appeals) or the] Commissioner (Appeals), may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the [72][Joint Commissioner (Appeals) or the] Commissioner (Appeals) [72][, as the case may be,] by the appellant.

Instructions to subordinate authorities.

119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued—

(*a*) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(*b*) so as to interfere with the discretion of [72-73][the Joint Commissioner (Appeals) or] the Commissioner (Appeals) in the exercise of his appellate functions.

(2) Without prejudice to the generality of the foregoing power,—

(*a*) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections 115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK, 139, 143, 144, 147, 148, 154, 155, 158BFA, sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C, 234E, 234F, 270A, 271, 271C, 271CA and 273 or otherwise), general or special orders in respect of any class of incomes or fringe benefits or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(*b*) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income-tax authority, not being [72-73][a Joint Commissioner (Appeals) or] a Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;

S 119(2)(b) advantage and restriction

- **Power - Condonation of delay to admit delayed filing of appeal**

- **Duties[Limitation Act Sec 3/5 and 14] [Remember: ITAT doesnot have power to condone delay in MA]**
  - **Onus: Appellant has the onus to establish sufficient cause for delay**
  - **Sufficient cause is a cause for which the tax-payer cannot be blamed** Baswaraj and Ors Vs. the Spl Land Acquisition officer AIR 2014 SC 746
  - **The appellant was pursuing another permissible remedy instead of appeal (Sec 14)**
  - **8 points guidance by SC in** Pathapati Subba Reddy **(**Died**)** by LRs and Ors**.** V**.** the special Deputy Collector **(**LA**) (**neutral citation**:** 2024 INSC 286**)**

Guidance by SC in Pathapati Subba Reddy (Died) by LRs and Ors. V. the special Deputy Collector (LA) (neutral citation: 2024 INSC 286)

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the remedy itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamount to disregarding the statutory provision

- **Power - Admission of additional ground of appeal**
  - **Duties [Record a satisfaction] S. 250(5)**

  "that the omission of that ground from the form of appeal was not wilful or unreasonable"

Power - Admission of additional evidence -The appellant should file an application under Rule 46A

Duties [Rule 46A; Remand; Rejoinder]

Reasons for admission of such evidence has to be recorded in writing by the FAA

Remand and rejoinder proceedings need to be conducted as PNJ

Rule 46A

Production of additional evidence before the [83][*Joint Commissioner*] (Appeals) and Commissioner (Appeals).

46A. (1) The appellant shall not be entitled to produce before the [83][*Joint Commissioner*] (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely :—

(*a*) where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or

(*b*) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or

(*c*) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or

(*d*) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [84][*Joint Commissioner*] (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The [84][*Joint Commissioner*] (Appeals) or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity—

(*a*) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(*b*) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [84][*Joint Commissioner*] (Appeals) or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (*a*) of sub-section (1) of section 251 or the imposition of penalty under section 271.

- In Remand proceedings- **can new evidence be sought by FAA for purposes of Sec 251? YES**

- In Remand report –

  can AO can seek assistance of FAA for enhancement ? YES

  - Rule 46A(4)

(4) Nothing contained in this rule shall affect the power of the [84][*Joint Commissioner*] (Appeals) or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (*a*) of sub-section (1) of section 251 or the imposition of penalty under section 271.

Power - Power to **Enhance/vary the assessment/Penalty** and consider and adjudicate **any subject matter** if it forms part of assessment records (Sec 251 read with **Explanation** to Section)

Explanation.—In disposing of an appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals), may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, by the appellant.

(CIT vs Shapoorji Pallonji Mistri 1962 AIR 1086)

Power – Power **to make enquiry or cause enquiry and investigation** Sec 250(4)

Duties: Principles of natural Justice; SCN for enhancement

(CIT vs Jansampark Advertising (2015) 56 taxmann.com 186 (Del)

"the obligation to make proper inquiry and reach finding on facts does not end with the Assessing Officer. This obligation moves upwards to the Commissioner (Appeals), and also the Tribunal, should it come to their notice that there has been default in such respect on the part of the Assessing Officer. In such event, it is they who are duty bound to either themselves properly inquire or cause such inquiry to be completed."

CIT vs. Jansampark Advertising & Marketing (P.) Ltd.

[2015] 56 taxmann.com 286 (Delhi)/[2015] 231 Taxman 384 (Delhi)/[2015] 375 ITR 373 (Delhi)[11-03-2015]

- Assessment proceedings under the Income-tax Act are not a game of hide and seek. The inquiry in the wake of a notice under section 148 is not an empty formality. It must be effective and with a sense of purpose. There is an elaborate procedure set out which requires scrupulous adherence and followed up on.
- In the hierarchy of the authorities, the Assessing Officer is placed at the bottom rung. The two layers of appeals, before the matter engages the appellate jurisdiction of the Court, are authorities vested with the jurisdiction, power and obligation to reach appropriate findings on facts.
- Noticeably, it is only the appeal to the High Court, under section 260-A, which is restricted to consideration of 'substantial question of law'. If any arising.
- As would be seen from the discussion that follows, the obligation to make proper inquiry and reach finding on facts does not end with the Assessing Officer. This obligation moves upwards to the Commissioner (Appeals), and also the Tribunal, should it come to their notice that there has been default in such respect on the part of the Assessing Officer. In such event, it is they who are duty bound to either themselves properly inquire or cause such inquiry to be completed. If this were not to be done, the power under section 148 would be rendered prone to abuse. [Para 35]

Power - Power to pass appeal orders

Duties [Speaking and reasoned order] 250(6)

(6) The order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

The HC of Gujarat has imposed cost of Rs 50,000 on one FAA who just passed a one line order dismissing appeal

Power - Power to **set-aside** best judgement assessment u/s 144 (CITs only);

Duties - Jurisdictional issue should be adjudicated

Suggestion- Please highlight factual enquiries to be conducted by AO

Power -Power to direct reopening of assessment proceedings notwithstanding provisions of

[78][Provision for cases where assessment is in pursuance of an order on appeal, etc.

150.*(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation, in consequence of, or to give effect to, any finding or direction contained in an order passed by—*

(a) any authority in any proceeding under this Act by way of appeal, reference or revision; or

(b) a court in any proceeding under this Act or any other law.

(2) The provisions of sub-section (1) shall not apply in any case where the assessment or reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment or reassessment or recomputation could not have been made, by reason of any other provision limiting the time within which any action for assessment or reassessment or recomputation may be taken, at the time when,—

(a) the order which was the subject matter of the appeal, reference or revision, as the case may be, was made; or

(b) the proceedings relating to assessment or reassessment or recomputation under this Act (other than those proceedings which have culminated in an order), which was the subject-matter before the Court, was initiated.

(3) For the purposes of sub-section (1), notice under section 148 shall be issued within a period of three months from the end of the quarter in which the certified copy of the order of the authority or the Court, as the case may be, is received by the jurisdictional Principal Commissioner or Commissioner.]

Suggestion: Please issue directions for Procedural adherence by AO

Any suitable example is welcome for the benefit of everyone

S 150- directions for assessment (re-opening)

Provision for cases where assessment is in pursuance of an order on appeal, etc.

150. (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

Civil proceedings but not a ‘lis’- i.e. dispute between opposite parties

- **CIT v. Indian Express (Madurai) (P.) Ltd. [1983] 140 ITR 705/13 Taxman441 (Mad.)** , which has thereafter been followed by **Ramco Cements Ltd. v DCIT [2015] 55 taxmann.com 79**

- The task of an appellate authority under the taxing statute is to address its mind to the factual and legal basis of an assessment for the purpose of properly adjusting the taxpayer's liability to make it accord with the legal provisions governing his assessment.
- Since the be-all and end-all of the statutory provisions, especially those relating to the administration and management of income-tax, is to ascertain the taxpayer's liability correctly, to the last pie, if it were possible, the various provisions relating to appeal, second appeal, reference and the like can hardly be equated to a *lis* or dispute as arises between the two parties in a civil litigation.
- Although the income-tax statute makes the department or its officers figure as parties in appeal proceedings, they are not in the strict sense what are called by American writers as parties to adversary proceedings

Precedence

CIT vs. Thana Electricity Supply Ltd. [1994] 206 ITR 727 (Bombay)/[1993] 112 CTR 356 (Bombay)[22-04-1993]

For deciding whose decision is binding on whom, it is necessary to know the hierarchy of the courts. In India, the Supreme Court is the highest court of the country. That being so, so far as the decisions of the Supreme Court are concerned, it has been stated in article 141 of the Constitution itself that :

> "The law declared by the Supreme Court shall be binding on all courts within the territory of India."

In that view of the matter, all courts in India are bound to follow the decisions of the Supreme Court.

Though there is no provision like article 141 which specifically lays down the binding nature of the decision of the High Courts, it is a well-accepted legal position that a single judge of a High Court is ordinarily bound to accept as correct judgments of courts of co-ordinate jurisdiction and of the Division Benches and of the Full Benches of his court and of the Supreme Court. Equally well-settled is the position that when a Division Bench of the High Court gives a decision on a question of law, it should generally be followed by a co-ordinate Bench of the same High Court. If the co-ordinate Bench in the subsequent case wants the earlier decision to be reconsidered, it should refer the question at issue to a larger Bench.

Thana Electricity Supply Company

It is equally well-settled that the decision of one High Court is not a binding precedent on another High Court. The Supreme Court in *Vattiama Champaka Pillai* v. *Sivathanu Pillai*, AIR 1979 SC 1937, dealing with the controversy whether a decision of the erstwhile Travancore High Court can be made a binding precedent on the Madras High Court on the basis of the principle of stare decisis, clearly held that such a decision can at best have persuasive effect and not the force of binding precedent on the Madras High Court. Referring to the States Reorganisation Act, it was observed that there was nothing in the said Act or any other law which exalts the ratio of those decisions to the status of a binding law nor could the ratio decidendi of those decisions be perpetuated by invoking the doctrine of stare decisis. The doctrine of stare decisis cannot be stretched that far as to make the decision of one High Court a binding precedent for the other. This doctrine is applicable only to different Benches of the same High Court.

It is also well-settled that though there is no specific provision making the law declared by the High Court binding on subordinate courts, it is implicit in the power of supervision conferred on a superior Tribunal that the Tribunals subject to its supervision would confirm to the law laid down by it. It is in that view of the matter that the Supreme Court in *East India Commercial Co, Ltd.* v. *Collector of Customs*, AIR 1962 SC 1893 (at page 1905) declared :

"We, therefore, hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and they cannot ignore it. ..."

This position has been very aptly summed up by the Supreme Court in *Mahadeolal Kanodia* v. *Administrator-General of West Bengal*, AIR 1960 SC 936 (at page 941) as follows :

"Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view, the result would be utter confusion. The position would be equally bad where a judge sitting singly in the High Court is of opinion that the previous decision of another single judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench."

The above decision was followed by the Supreme Court in *Baradahanta Mishra* v. *Bhimsen Dixit*, AIR 1972 SC 2466, wherein the legal position was reiterated in the following words (at page 2469) :

"It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

Having decided whose decision binds whom, we may next examine what is binding. It is well-settled that it is only the ratio decidendi that has a precedent value. As observed by the Supreme Court in *S.P. Gupta* v. *President of India*, AIR 1982 SC 149 (at page 231) : "It is elementary that what is binding on the court in a subsequent case is not the conclusion arrived at in a previous decision, but the ratio of that decision, for it is the ratio which binds as a precedent and not the conclusion." A case is only an authority for what it actually decides and not what may come to follow logically from it. Judgments of courts are not to be construed as statutes (see *Amar Nath Om Parkash* v. *State of Punjab*, AIR 1985 SC 218; [1985] 1 SCC 345).

Thana Electricity Supply Company

ACIT vs. Saurashtra Kutch Stock Exchange Ltd.

[2008] 173 Taxman 322 (SC)/[2008] 305 ITR 227 (SC)/[2008] 219 CTR 90 (SC)[15-09-2008]

Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of - Assessment year 1996-97 - Whether non-consideration of a decision of Jurisdictional High Court or of Supreme Court can be said to be a 'mistake apparent from record' w eld, y

42. In our judgment, it is also well-settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite sometime, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

43. Salmond in his well-known work states :

> ". . . (T)he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. *The overruling is retrospective, except as regards matters* that are *res judicataor accounts that have been settled in the meantime*." [Emphasis supplied]

PCIT vs Dhanalaxmi Bank – When shall a ratio of SC decision apply?

(2023) 155 taxmann.com 613 (Kerala HC)

INCOME TAX : Where assessee, a scheduled bank, claimed deduction under section 36(1)(vii) and Tribunal relying on a judgment of Supreme Court allowed assessee's appeal, since assessee had not reduced value of its assets by a figure corresponding to bad debts written off by it Tribunal was in error in allowing appeal through a mere application of a ratio in Supreme Court judgment without ascertaining whether factual position that was established in judgment above existed in instant case

Commissioner of Income-tax vs. Sun Engineering Works (P.) Ltd. [1992] 64 Taxman 442 (SC)/[1992] 198 ITR 297 (SC)/[1992] 107 CTR 209 (SC)[17-09-1992]

It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their proceedings.

Sun Engineering – but a major difference when reopened cases are being assessed

Section 147 of the Income-tax Act, 1961 - Reassessment - General - Assessment years 1960-61 and 1961-62 - Whether proceedings under section 147 are for benefit of revenue and not an assessee and are aimed at gathering 'escaped income' of an assessee, and same cannot be allowed to be converted as 'revisional' or 'review' proceedings - Held, yes - Whether claims which have been disallowed in original assessment proceeding can be permitted to be reagitated on assessment being reopened for bringing to tax certain income which had escaped assessment - Held, no - Whether, a matter not agitated in concluded original assessment proceedings also cannot be permitted to be agitated in reassessment proceedings unless relatable to item sought to be taxed as 'escaped income' - Held, yes - Whether, therefore, in reassessment proceedings under section 147 assessee cannot seek a review of concluded item, unconnected with escapement of income for purpose of computation of escaped income - Held, yes

Interpretation of Statues - Interpretation of a Machinery Provision

Stare decisis vs Public interest

1. Stare decisis implies adhering to previous decision of the predecessor authority on the same question of law
2. Res-judicata doesnot apply to facts
3. However, Stare decisis is not binding if public interest so demands

Distributors (Baroda) (P.) Ltd. vs. Union of India [1985] 22 Taxman 49 (SC)/[1985] 155 ITR 120 (SC)/[1985] 47 CTR 349 (SC)[01-07-1985]

If Court was unconsciously wrong yesterday, should Court be consciously wrong today?

1. **ITAT requires revised Form 36 by LRs**
2. **CIT(A)/JC (A)- Should require similarly-** but I couldnot find any Rule position
3. Please require the appellant’s representative to approach AO and get LR on record instituted; Please pass order specifying the details of LR along with name of deceased appellant
4. **S 170 of IT Act**: Successor has the liability but it is limited to the estate of the deceased; IBC doesnot override IT Act in my opinion – please also check **Section 156A**
5. **S 178 of IT Act**: liquidation by winding up of Company- IBC overrides IT Act

Admission of additional claim without filing revised RoI- not permitted and settled by Hon SC – Goetz India decision -
Goetze (India) Ltd. vs. Commissioner of Income-tax [2006] 157 Taxman 1 (SC)/[2006] 284 ITR 323 (SC)/[2006] 204 CTR 182 (SC)[24-03-2006]

Section 139 read with section 139(5) of the Income-tax Act, 1961 - Return of income - General - Assessment year 1995-96 - Whether an assessee can amend a return filed by him for making a claim for deduction other than by filing a revised return - Held, no

CASE REVIEW

National Thermal Power Company Ltd. v. *CIT*[1998] 229 ITR 383 (SC)*distinguished.*

Admission of additional claim without filing revised RoI- not permitted

2. The question raised in this appeal relates to whether the appellant-assessee could make a claim for deduction other than by filing a revised return. The assessment year in question was 1995-96. The return was filed on 30-11-1995 by the appellant for the assessment year in question. On 12-1-1998, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Income-tax Act to make amendment in the return of income by modifying an application at the assessment stage without revising the return.

3. This appellant's appeal before the Commissioner of Income-tax (Appeals) was allowed. However, the order of the further appeal of the Department before the Income-tax Appellate Tribunal was allowed. The appellant has approached this Court and has submitted that the Tribunal was wrong in upholding the Assessing Officer's order. He has relied upon the decision of this Court in *National Thermal Power Co. Ltd.* v. *CIT*[1998] 229 ITR 383 , to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal.

4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs.

Admission of additional ground first time before ITAT (second appellate authority)

- Pure question of Law – Yes, **if the facts are in the assessment record**
- Pure question of fact - no
- Mixed question of Law and facts – no

Meenakshi Mills Madurai vs CIT (26/09/1956) 1957 AIR 49/1956 SCR 691

(lets understand with an example)

- Also, please note that question of challenge to **territorial/pecuniary Jurisdiction of AO** is a question of Fact – administrative orders have to be ascertained

Can assessment be framed without issuing 143(2) notice?

- There are broadly two schemes of assessment in the IT Act:
  a. Where a valid RoI exists/ valid RoI is filed in response to notice seeking RoI
  b. Where a RoI doesnot exist/ is not filed in response to notice seeking RoI/ is invalid RoI
- Act mandates tax-payer to file a valid RoI in response to notices u/s 148/153A/153C, even if a RoI was filed previously
- **In case of 'a':** Notice u/s 143(2) is mandatory, and assessment shall ordinarily happen u/s 143(3)/ or rws 147 or rws 153A, etc. [144 only if books of accounts are rejected]
- **In case of 'b':** Norice u/s 143(2) is not mandatory but assessment has to be done as per 144 (1) (a)
- **Also**: Change in incumbency doesnot require new 143(2) notice (S 127(4)

LETS CHECK RELEVANT PROVISIONS

Will Format of 143(2) notice matter? **Not yet settled, Delhi HC is in Revenue's favour Bharat Bansal W.P.(C) 2238/2026, CM APPL. 10798/2026 & CM APPL. 10799/2026**

Corroboration, Books of accounts and VC Shukla decision

- **The decision in VC Shukla can guide the IT authority on**
  - **corroboration and independent evidence** – YES
  - **But with respect to 'books of accounts' it is not strictly applicable to proceedings under the Income Tax Act WHY?**
    - **In VC Shukla, books have been held to be 'Bound papers" and restrictive meaning has been given to the term 'books' as per Evidence Act; simultaneously, an exception has been provided if there is a specific definition of 'Books' in any statute:**

"While on this point we may refer to Section 209 of the Companies Act, 1956 which expressly lays down what 'books of account' to be maintained thereunder must contain and, therefore, the general meaning of the above words under the Act may not be applicable there" (extract)

Corroboration, Books of accounts and VC Shukla decision

- **But with respect to ‘books of accounts’ it is not strictly applicable to proceedings under the Income Tax Act WHY?**

  - **IT Act defines** ‘Books of accounts’ in S 2(12A)- "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device;

  - **Difference**: The term ‘ledger’ doesnot mention ‘books’; plus, print out of data; electronic form, etc are unique

Lets discuss corroboration and its implication on Independent enquiries and Cross examination

Corroboration- Independent enquiries and Cross Examination

Corroboration: If an ‘independent evidence’ can establish a part of the document to be true and correct, the entire document has to be read as if the transactions are true and correct **SETTLED JURISPRUDENCE**

If the document is corroborated, is cross examination required: NO

Lets discuss the requirement of Independent Enquiries if the document is corroborated

Commissioner of Income-tax - Central vs. Sunita Dhadda [2018] 100 taxmann.com 526 (SC)[28-03-2018] wherein Hon SC has held that they do not find any ground to interfere with the order of Ld. HC and dismissed the SLP:

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- **“SLP dismissed against order of High Court holding that where Assessing Officer while making addition on account of 'on money' received by assessee on sale of land to a builder group relied upon statement of director of builder and did not allow assessee to cross examine said director, there being violation of principle of natural justice, impugned addition was to be deleted”**

Adjudicating appeals having base order as sec 144 (suggestions)

1. The discretion is with the First appellate authority
2. Act only specifies Sec 144
3. However, the relevant Explanatory Memo mentions ‘best judgement’
4. Please check if during appellate proceedings the appellant has submitted evidences which require extensive enquiries by the AO, which may not be possible with the machinery available with the CIT(A)
5. If possible, issue a request (remand proceedings) to AO to ascertain his/her response for atleast 15-20 days; the CAP requires AO to give first response in 15 days. If response is not received, appeal may be set-aside
6. Please adjudicate legal challenge while setting aside
7. In cases where appellant has not submitted any document, its better to dismiss the Appeal, rather than setting it aside. Non prosecution is not a ground for dismissal, hence please frame the order appropriately.
8. Please read: **PCIT vs Ashok C Thakore** (Gujarat HC, SLP of appellant not admitted in SC) Ashokji Chanduji Thakor vs. Principal Commissioner of Income-tax [2021] 130 taxmann.com 131 (SC)/[2021] 282 Taxman 307 (SC)[26-07-2021]

Lack of Independent enquiries

1. Sec 142(2) has to be adhered to by the AO
2. Material has to be gathered as provided in sec 143(3) before framing assessment order
3. The same material which has been utilized to assume jurisdiction may not be sufficient to fasten tax-liability on the assessee
4. Additions based on conjectures, surmises and suspicion cannot be upheld by FAA
    1. **K.P. Varghese vs. Income-tax Officer [1981] 7 Taxman 13 (SC)/[1981] 131 ITR 597 (SC)/[1981] 24 CTR 358 (SC)[04-09-1981]**
    2. **Omar Salay Mohamed Sait vs. Commissioner of Income-tax [1959] 37 ITR 151 (SC)[05-03-1959]**
    3. **Commissioner of Income-tax vs. Maulikkumar K. Shah [2008] 307 ITR 137 (Gujarat)[20-07-2007]**. The onus of independent enquiry, before accepting or rejecting contentions of the appellant lies heavily on the AO.

Constructive Possession

- I will touch upon its importance after **Abhisar Buildwell** decision of SC
  - We know that Investigation wing carries out co-ordinated Searches where all such premises are covered where there is a reason to suspect that relevant material pertaining to persons covered under S&S is likely to be found.
  - Decision in Abhisar Buildwell lead to peculiar contentions in cases:
    - Where no seized document was found/seized from the premises of main assessee
    - Incriminating document pertaining to main assessee and business was found and seized from premises of Employees

Constructive Possession

- The main assessee sought shield of Abhisar to contend that in absence of seized material, assessment cannot be done in his case (in completed/unabated assessments)
- The employee furnished an affidavit that the seized material are not incriminating to him (since they are incriminating to main assessee)
- To resolve such situation, doctrine of ‘constructive possession’ was applied and it has been held that in a coordinated S&S operation, the seized material found at the premises of associates/employees can be held to be the seized material of main assessee

Reading Abhisar Buildwell, SC with Benefit Tradelink (ITAT Ahmedabad)

- Whenever an AR relies on Abhisar Buildwell, she/he should be required to specify whether the concerned year is an “Abated/uncompleted’ year, or ‘Unabated/Completed’ year.
- There is no bar on assumption of jurisdiction in an Abated/uncompleted year, even if seized material is absent
- Assumption of jurisdiction in an ‘unabated/completed year’ is only possible when there is seized material.
- **BENEFIT Tradelink** order: Once the jurisdiction is assumed, the AO is free to travel beyond the seized document and utilize any/all material on record to complete assessment and determine ‘total income’.

Assessment of income of any other person.

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(*a*) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(*b*) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :

- Satisfaction of AO of Searched person is different from satisfaction of AO of ‘any other person’
- Term ‘person’ has been used, and not ‘persons’- hence satisfaction note cannot be in name of multiple persons
- Term ‘total income’ has been used which requires reference to Assessment year (FY)
- Hence the section has been interpreted to hold that only specific satisfaction note can be upheld
- Relevant case Laws:
    - Saksham Commodities

- **Indian National Congress vs. Deputy Commissioner of Income-tax [2024] 160 taxmann.com 606 (Delhi)/[2024] 463 ITR 431** (Delhi)[22-03-2024], Hon. Delhi HC has held that “Satisfaction note merely forms foundation for initiation of action which would enable to evaluate whether an opinion has been validly formed and as long as it rests on incriminating material which pertains to assessment years in question, same would qualify requirement of section 153C**.”**

- It has been categorically held by the judiciary that the satisfaction note **should clearly bring out the amounts pertaining to each year which may have a bearing on determination of total income**. In their decision in **Assistant Commissioner of Income-tax vs. Neelkanth Steel and Alloys [2025] 175 taxmann.com 849 (SC)**[16-06-2025], while approving the ratio of decision of Hon Delhi HC in **Saksham Commodities Ltd. vs. Income Tax Officer** [2024] 161 taxmann.com 485 (Delhi)/[2024] 464 ITR 1 (Delhi)[09-04-2024], Hon SC has **approved the ratio that the seized documents should necessarily have a bearing on the determination of total income**

- Deputy Commissioner of Income-tax vs. Sunil Kumar Sharma [2024] 168 taxmann.com 77 (SC)/[2024] 469 ITR 271 (SC)[21-10-2024] wherein one of the ratio's is as follows: "**SLP dismissed against order of High Court that satisfaction note is required to be recorded under section 153C for each assessment year and hence, a consolidated satisfaction note recorded for different assessment years, would vitiate entire assessment proceedings.**"

- **Current Jurisprudence:** Assumption of jurisdiction on common satisfaction note is not proper

153C or 147 on ‘any other person’ pursuant to S & S operations?

- Lets discuss Paras Chandreshbhai Kotecha (Gujarat HC) CIVIL application number 17933 of 2018 and others
- Summary:
  - In case of S&S action, if documents, etc of ‘any other person’ is found and seized, the AO of Searched person is mandatorily required to supply such documents to the AO of ‘any other person’. In absence of this event:
    - 153C proceedings cannot happen
    - 147 proceedings cannot happen on such ‘seized material’, unless department has any other tangible material/information for re-opening
  - In case where there was no occasion for the AO of the searched person to record a satisfaction on the documents pertaining to S&S, as the live link with ‘any other person’ emerged due to post Search proceedings, reopening u/s 147 is permissible

Can both “Real Income” and “Deemed Income” be taxed together

- There is a great deal of unnecessary confusion on this issue:
  - Real income is the income from Business activities.
  - It has no concern with deemed income. Deemed income is a fiction. It is rooted in ‘unexplained nature’ of credits and assets
  - Long back Hon SC has settled these questions:
    - Deeming additions can be made even in cases of estimation of income and rejection of books of accounts**: Kale Khan Mohd Haneef (1963) 50 ITR 1; Devi Prasad Vishwanath (1969) 72 ITR 194 (SC)**

Borrowed Information, or, Borrowed satisfaction?

- PL Goenka HUF – Kolkata HC- **IA Number GA/2/2024:**

(Relied on Rajesh Jhaveri Stock brokers, SC)

- **Verbatim Satisfaction Notes:**

HC of Gujarat in the matter of Bhagwandas Rupchand Parwani vs. Assistant Commissioner of Income-tax [2024] 160 taxmann.com 7 (Gujarat)[06-02-2024]

Where Assessing Officer of assessee independently recorded satisfaction fulfilling requirements of section 153C, there was no substance in argument of assessee that satisfaction note of Assessing Officer of assessee was to be discarded being a copy in verbatim of satisfaction note of Assessing Officer of searched person.

Whether verbatim satisfaction Notes vitiate proceedings?

Merger of entire order or only of “Subject matter”

- S 263: Co terminus power of PCIT/CIT(Admin) and CIT(A)
- Recent decision of **Shyam Sel and Power Ltd vs PCIT-Kolkata** HC: ITA 24 of 2026

i. Shyam Sel and Power Ltd. vs. Principal Commissioner of Income-tax (Central) [2026] 186 taxmann.com 1194 (Calcutta)[07-05-2026]

ii. M/s MSN Agro Properties Pvt Ltd vs PCIT, ITA No 746/M/2021

How to effectively deal with Retraction

Roshan Lal Sanchiti vs. Principal Commissioner of Income-tax [2023] 150 taxmann.com 228 (SC)

Ratio of reasonable time, sufficient evidences to support retraction, complaints to superior authorities hold ground

Sec 124(3) of IT Act – Lets read together

Hon SC has held that the appellant FORFEITS the right to challenge jurisdiction beyond the provisions of Sec 124(3).

[Deputy Commissioner of Income-tax (Exemption) vs. Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC)/[2023] 293 Taxman 493 (SC)/[2023] 454 ITR 582 (SC)[01-05-2023]].

Thanks for your time and patience

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